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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,044	12/16/2003	Michael Stewart	D-43342-01	4765

28236 7590 04/12/2005

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/737,044	Applicant(s) STEWART ET AL.	
	Examiner Thanh K Truong	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/16/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's preliminary amendment received on December 16, 2003.
2. Applicant's cancellation of claims 1-16 is acknowledged.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features recited in claims 21: "at least part of the sealing sheet material is heated after the former is engaged with the sealing sheet material", and claim 29: "the sheet sealing material is cut or shaped during and/or after being secured to the container rim" (emphases added) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 22-24, 28 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 is considered vague and indefinite because of the following reason: the independent claim 17 recites that: "forming a recessed portion in the sealing sheet material after the sealing sheet material has been secured to the container rim" (emphasis added), however, claim 22 (a dependent claim of the independent claim 17) recites that: "the recessed portion of the sealing sheet material is partly formed before the sealing sheet material is secured to the container rim". Claim 22 introduces a limitation that is inconsistent with the claim limitation as set forth in claim 17. It is unclear what are the metes and bounds of the claimed invention?

Similarly, claims 23, 24, 28 and 29 are vague and indefinite.

Claim 24 recites "the sealing sheet material is not drawn across the container rim as the recessed portion is formed", however, claim 17 recites "providing a sealing sheet material across the container opening".

Claim 28 recites "the sealing material is ... shaped prior to being secured to the container rim", and claim 29 recites "the sheet sealing material is ... shaped during ... being secured to the container rim" (emphasis added). The recitations contradict the claim limitation set forth in claim 17 therefore render the claims indefinite.

The phrase "during and/or after" in claim 29 is vague and indefinite, because the sheet sealing material cannot be cut during and after being secured to the container rim. There is no support for the claimed limitation in the applicant's disclosure.

Accordingly, claims 22-24, 28 and 29 are not being considered in this office action, and claims 22-24 will be examined on the merit when the 112 rejections are resolved.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 17-21, 25-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller (4,065,908).

Mueller discloses a method comprising the steps:

providing a container (22) having a container opening defined by a rim (34) of the container;

providing a sealing sheet material (24) across the container opening and removably securing the sealing sheet material to the container rim (column 6, lines 42-44);

forming a recessed portion in the sealing sheet material after the sealing sheet material has been secured to the container rim such that the recessed portion projects into the container opening (figure 6 – column 9, lines 25-37 discloses that member 161 hold down the sealing sheet material at the rim before the recessed portion is formed); and

attaching a reclosable lid (26) to the container rim after the sealing sheet material has been secured to the rim and the recessed portion has been formed, wherein a portion of the lid projects into the recessed portion of the sealing sheet material within the container opening (figure 6 shows that sealing sheet material 24 is position below the lid 26, therefore the sealing sheet material is positioned into the container before the lid, thus the lid 26 is attaching to the container after the sealing sheet material has been secured to the rim).

Muller further discloses: the recessed portion is thermoformed (column 7, lines 28-30); the sealing sheet material is engaging with a former (162) to form the recessed portion in the sealing sheet material; at least part of the sealing sheet material is heated before the former is engaged with the sealing sheet material (figure 6 – column 9, lines 25-37 discloses that member 161 hold down the sealing sheet material at the rim before

the recessed portion is formed); at least part of the sealing sheet material is heated at the same time as the former is engaged with the sealing sheet material (column 9, lines 50-58); the sealing sheet material is a thermo formable film and the action of heating the film for thermoforming also initiates the bonding of the film to the container rim (column 7, lines 44-54); and the sealing sheet material is removably secured to an upper end face of the container rim.

8. Claims 17-19, 21, 25-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Bank (3,734,276).

Bank discloses a method comprising the steps:

providing a container (10) having a container opening defined by a rim (16) of the container;

providing a sealing sheet material (14) across the container opening and removably securing the sealing sheet material to the container rim (for the fact that the sheet material 14 is loosely placed over the rim 16 (column 1, line 65) and does not move when the former 24 is pressing down to form the recessed – figures 2 & 3 – is construed as being “removably securing” to the container rim);

forming a recessed portion in the sealing sheet material after the sealing sheet material has been secured to the container rim such that the recessed portion projects into the container opening (figures 2 & 3); and

attaching a reclosable lid (18) to the container rim after the sealing sheet material has been secured to the rim and the recessed portion has been formed, wherein a

portion of the lid projects into the recessed portion of the sealing sheet material within the container opening (figure 6).

Bank further discloses: the recessed portion is thermoformed (column 2, lines 17-21); the sealing sheet material is engaging with a former (24) to form the recessed portion in the sealing sheet material; at least part of the sealing sheet material is heated after the former is engaged with the sealing sheet material (figure 4, column 2, lines 17-21); the sealing sheet material is a thermo formable film and the action of heating the film for thermoforming also initiates the bonding of the film to the container rim (column 2, lines 35-39); and the sealing sheet material is removably secured to an upper end face of the container rim.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

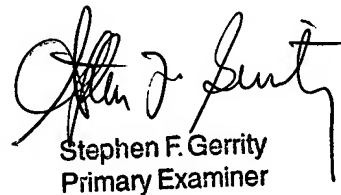
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (571) 272-4472. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tkt
April 4, 2005.



Stephen F. Gerrity
Primary Examiner